

The "Daily Plan-It"™

HELLMUTH & JOHNSON, PLLC

Volume 14, Issue 21

10/20/2011

Deadline Nears for Reporting Option That Applies to Many Large Estates

For once, it seems that the IRS did something to be helpful for families that want to preserve wealth.

The Internal Revenue Service issued guidance back in August on the treatment of basis for certain estates of decedents who died in 2010.

This guidance assists executors who are making the choice to opt out of the estate tax and have the carryover basis rules apply.

The estate tax was automatically repealed for most of 2010, but lawmakers reinstated it in December to be retroactive back to January 2010, thus setting the estate tax at a rate of 35 percent with an exemption of \$5 million per individual and \$10 million for married couples.

If you had a wealthy client die last year and the executor wants to opt out of the estate tax for 2010, then there's still time to act.

File by January 17, 2012

Form 8939, which can be downloaded from <http://www.irs.gov/pub/irs-pdf/f8939.pdf>, is the basis allocation form required to be filed by executors opting out of the estate tax. It is due by Jan. 17, 2012. The instructions for filling out the form can be found at <http://www.irs.gov/pub/irs-pdf/i8939.pdf>.

Under the guidance issued, an executor must file Form 8939, Allocation of Increase in Basis for Property Acquired from a Decedent, to opt out of the estate tax and have the new carryover basis rules apply.

Background Information

Under the Economic Growth and Tax Relief Reconciliation Act of 2001, the estate tax was repealed for persons who died in 2010.

However, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 reinstated the estate tax for persons who died in 2010.

This recent law allows executors of the estates of decedents who died in 2010 to opt out of the estate tax, and instead elect to be governed by the repealed

carry-over basis provisions of the 2001 Act. This choice is to be made by filing Form 8939.

A Kinder, Gentler IRS?

And so, this recent move by our federal government to actually be helpful to taxpayers may have some advisors scratching their heads.

But to a degree it makes sense, given the IRS's shift in recent years from being a hard-line enforcer to a "let's-find-a-mutually-beneficial-solution" agency.

The IRS used to focus its efforts on making taxpayers be compliant. But when it reorganized in 1998, its mission changed. Today, the IRS calls taxpayers "customers" and it deleted references to enforcement of the tax laws from its mission statement in favor of a customer service ethic.

As always, I hope this article has helped you and your clients. If you have a specific case or concern you'd like to discuss, please contact our office.

This publication provided by:

TIMOTHY O. DAVIS

Phone: 952-746-2104

Email: tdavis@hjlawfirm.com

SUSAN L. ANDERSON

Phone: 952-746-2123

E-mail: sanderson@hjlawfirm.com

Tim is a partner in the firm with 30 years of experience.

Susan brings over 17 years experience. Both Tim and Susan specialize in Estate and Business Planning, Probate and Trust Law, and related Tax matters. They assist clients in creating estate plans that provide for the control, maintenance, and disposition of their assets in a manner consistent with their objectives.

Hellmuth & Johnson, PLLC has 36 attorneys and is a full service firm offering legal services to individuals and businesses, with a heavy concentration in real estate, real estate construction and litigation matters.



HELLMUTH & JOHNSON PLLC

ATTORNEYS AT LAW

8050 West 78th Street
Edina, MN 55439

Phone: (952) 941-4005

Fax: (952) 941-2337

Web: <http://www.hjlawfirm.com>